

EVIDENCE — Photographs in general; stipulations concerning issues depicted in photographs do not make photos inadmissible — Revised 3/2010

In general, photographic evidence is admissible if it is relevant to an issue in the case, unless its probative value is substantially outweighed by the danger of unfair prejudice in its admission. *State v. Day*, 148 Ariz. 490, 497, 715 P.2d 743, 750 (1986), *overturned in part on other grounds by State v. Ives*, 187 Ariz. 102, 927 P.2d 762 (1996); *State v. Nieto*, 186 Ariz. 449, 457, 924 P.2d 453, 461 (App. 1996). The admissibility of photographs involves a three-part inquiry: (1) Is the photograph relevant? (2) Does the photograph tend to incite passion or inflame the jury and (3) Is the probative value of the photograph substantially outweighed by the danger of unfair prejudice. Rule 403, Ariz. R. Evid.; *State v. Hughes*, 189 Ariz. 62, 73, 938 P.2d 457, 468 (1997); *State v. Murray*, 184 Ariz. 9, 28, 906 P.2d 542, 561 (1995). "It is for the trial court in each instance to exercise sound discretion in balancing probative value against the risk of unfair prejudice." *State v. Doerr*, 193 Ariz. 56, 64, ¶ 33 at 64, 969 P.2d 1168, 1176 (1998). "A trial court's ruling on the admissibility of photographs will not be overturned on appeal absent an abuse of discretion." *State v. Rienhardt*, 190 Ariz. 579, 584, 951 P.2d 454, 459 (1997), *cert. denied* 525 U.S. 838 (1997), *see also State v. Gulbrandson*, 184 Ariz. 46, 60, 906 P.2d 579, 593 (1995), *cert. denied*, 518 U.S. 1022 (1996). Photographs may be admitted for many legitimate purposes:

Photos may be placed in evidence for various reasons, such as proving corpus delicti, identifying the victim, showing the nature and location of injuries, helping to determine the degree and severity of the crime, corroborating witnesses, illustrating or explaining testimony, and supporting a theory of how and why the homicide was committed. See *State v. Castaneda*, 150 Ariz. 382, 391, 724 P.2d 1,10 (1986). Even when inflammatory, these exhibits may be admitted if the trial judge determines

that their probative value outweighs the risk of unfair prejudice. See [*State v.*] *Spreitz*, 190 Ariz. [129] at 141, 945 P.2d [1260] at 1272.

Doerr, 193 Ariz. at 65-66, 969 P.2d at 1177-78 (1998), see also *State v. Castaneda*, 150 Ariz. 382, 391, 724 P.2d 1, 10 (1986); *Nieto*, 186 Ariz. at 457, 924 P.2d at 461. The decision to admit photographic evidence for any such purpose rests within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Doerr*, 193 Ariz. at 65, 969 P.2d at 1177.

In murder cases, as well as in other fact situations, the defense may stipulate to an issue, and then argue that because of that stipulation, photographs offered by the prosecution should be excluded as lacking probative value for anything at issue in the case. While it is true that photographs that do not prove or disprove a contested fact are usually inadmissible, *State v. Chapple*, 135 Ariz. 281, 288, 660 P.2d 1208, 1215 (1983), the defense's stipulations to an issue may be insufficient to block the admission of photographs when the photographs are relevant to corroborate or explain other evidence:

[A] photograph does not necessarily lack probative value when it helps prove only uncontested issues. *State v. Dickens*, 187 Ariz. 1, 18, 926 P.2d 468, 485 (1996) (stating that a defendant's "tactical decision not to contest an essential element of the offense" does not relieve the state's burden of proving each element of the alleged crime), *cert. denied*, --- U.S. ---, 118 S.Ct. 311, 139 L.Ed.2d 240 (1997). Such photographs still have probative value if they tend to corroborate state witnesses, illustrate or explain testimony, or determine the degree of the crime. *State v. Moorman*, 154 Ariz. 578, 586, 744 P.2d 679, 687 (1987).

State v. Wagner, 194 Ariz. 1, 10, ¶ 43, 976 P.2d 250, 259 (App. 1998), *approved in part, vacated in part on other grounds*, 194 Ariz. 310, 982 P.2d 270 (1999). In *Wagner*, because the defendant stipulated that he had shot and killed the victim, he argued on appeal that the trial court erred by admitting autopsy photographs of the victim. The

Court of Appeals disagreed, noting that each of the photographs "had probative value either for corroboration or to aid in understanding testimony in the case." *Id.* at 11, ¶ 45, 976 P.2d at 260. Therefore, the trial court did not abuse its discretion in allowing the photographs to be admitted into evidence. Similarly, in *State v. Walden*, 183 Ariz. 595, 905 P.2d 974 (1995), *rejected in part on other grounds by State v. Ives*, 187 Ariz. 102, 927 P.2d 762 (1996), the defendant offered to stipulate to the cause and manner of the victim's death, but over defense objections, the trial court admitted photographs of the victim's body at the crime scene and at the autopsy. On appeal, the Arizona Supreme Court upheld the admission of the photographs. Because the photographs helped the jury understand the murder scene and how the crime was committed, "[t]he fact that Walden was willing to stipulate to the cause and manner of death [did] not render the photographs inadmissible." *Id.* at 611, 905 P.2d at 990.